

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND CASE APPEAL NO. 34 OF 2021**

*(Arising from Land Application No. 189/2013 at Bukoba District Land and Housing Tribunal)*

**WINFREDA FELICIAN.....APPELLANT**

***VERSUS***

**SEPERATUS KASITA.....1<sup>st</sup> RESPONDENT**

**GEORGE KAMANZI.....2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

*16<sup>th</sup> February & 25<sup>th</sup> February 2022*

***Kilekamajenga, J.***

The appellant, Winfrida Felician, approached this Honourable Court of justice looking for justice. She stood challenging the decision of the District Land and Housing Tribunal of Bukoba. In moving this court, the appellant advanced four grounds of appeal, which, for the reasons stated here below, I take the discretion not to reproduce them in this brief judgment.

During the hearing of the appeal, the learned advocate, Ms. Theresia Bujiku, was willing to stand as an officer of the court, assisting the court to do justice. She alerted the court on the blatant error in the decision of the District Land and Housing Tribunal. She argued that, the hearing of the case at the District Land and Housing Tribunal was done in absence of assessors and there are no

reasons given. Even the assessors' opinions do not feature in the judgment of the trial tribunal contrary to **Section 23 (1) (2) of the Land Disputes Courts Acts**. Furthermore, on 26/06/2016, the trial tribunal visited the locus in quo, though in absence of the assessors. Over all, the tribunal did not follow the appropriate procedures required during the visiting the *locus in quo*. Supporting her argument, Ms. Theresia referred the court to the case of **Sikudhani Said Magambo and Another v. Mohamed Roble, Civil Appeal No. 197 of 2018**. Based on those illegalities, MS. Theresia invited the court to nullify the proceedings and decision of the District Land and Housing Tribunal.

On the other hand, the counsel for the respondent, Miss Gisera Maruka supported the submission by Ms. Thersia and urged the court to nullify the proceedings and decision of the District Land and Housing Tribunal. In her view, the matter should be left for any interested party to file suit.

In this appeal, there are two pertinent issues worthy determination. First, the counsel for the appellant argued that the case was heard by the District Land and Housing Tribunal without the involvement of assessors. On this point, the perusal of the court file shows that, before the hearing commenced the assessors who sat with the tribunal were Bwahama. When the case came for

hearing on 12<sup>th</sup> February 2015, the assessors were absent but the chairman proceeded for hearing without giving reasons for their absence. Thereafter, the chairman ordered the visiting of the locus in quo. Before the decision was made, the assessors came in again; this time the assessors were Bwahama and Annamery. The law requires the tribunal to be fully composed when presided with a chairman and not less than two assessors. See, **Section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, RE 2019** and **Regulation 19 (1) and (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003**. In case the assessors are absent, for any good reasons, the court may proceed in their absence as per **section 23(3) of the Land Disputes Courts Act, Cap. 216 RE 2019**. But, the absence of assessors must be backed up with reasons. In this case, the proceedings of the District Land and Housing Tribunal do not show when and why the assessors were dropped and later resurfaced before the judgment was delivered. I find this to be an anomaly that vitiated the proceedings and decision of the District Land and Housing Tribunal.

Second, the counsel for the appellant argued that, the tribunal did not follow the required procedures in visiting the locus in quo. I have carefully read the proceedings of the District Land and Housing Tribunal and it is obvious that the

tribunal ordered the visiting of the locus in quo. However, it failed to reconvene and inform the parties on what the tribunal observed. The best procedure required during the visiting of the locus in quo was stated in the case of **Nizar H.H. v. Gulamali Fazal Janmohamed [1980] TLR 29** which was quoted with approval in the case of **Sikuzani** (*supra*) where the Court of Appeal of Tanzania stated that:

*'When a visit to al locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, the court should attend with the parties and their advocates, if any, and with much each witnesses as may have to testify in that particular matter...when the court re-assembles in the court room, all such notes should be read out to the parties and their advocates, and comments, amendments, or objections called for and if necessary incorporated. Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand or relate to the evidence in court given by witnesses. We trust that this procedure will be adopted by the courts in future.'*

In the instant case, the proceedings of the District Land and Housing Tribunal do not show compliance to the above principle of the law. This error, also, vitiated the proceedings of the tribunal and the decision thereof. In the upshot, the two legal issues raised by the counsel for the appellant have merit. I allow the

appeal, quash the proceedings of the tribunal and set aside the decision thereof. The matter is left for any interested party to file a fresh suit before the competent forum. It is so ordered.

**DATED** at **BUKOBA** this 25<sup>th</sup> day of February, 2022.

  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**25/02/2022**  


**Court:** Judgment delivered this 25/02/2022 in the presence of the appellant and her advocate, Ms. Theresia Bujiku and the counsel for the 1<sup>st</sup> respondent. Miss. Gisera Maruka. The two respondents were absent. Right of appeal explained.

  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**25/02/2022**  
